

## **EKHUNHS FT Guidance on the Statutory Duties of Governors**

### **Introduction**

Following the implementation of the Health and Social Care Act 2012, the Council of Governors took the opportunity to review the new roles of Governors in the context of East Kent Hospitals NHS Foundation Trust.

A working group was established which undertook a review of FTN and FTGA guidance and Monitor's publication 'Your Statutory Duties: A reference guide for NHS Foundation Trust Governors'.

The following provides guidance on how each of the Governor roles will be applied. The document seeks to interpret, explain and put into local practice primarily the material that is in the Monitor guidance. It also links to certain parts of the Trust's Constitution, and draws in additional thoughts and agreed conclusions of the Working Group.

### **General Principles**

The overriding duty of the BoD is to be collectively and individually responsible for promoting the success of the FT so as to maximise the benefits for the members of the FT as a whole and for the public, particularly when they are patients of the FT. This means the BoD is focused on providing high quality health care to the FT members and communities it serves. By contrast the overriding role of the CoG is to hold the NEDs, individually and collectively, to account for the performance of the BoD and to represent the interests of FT members and the public. The BoD is therefore responsible for the direction and performance of the Trust, while the CoG is primarily responsible for assuring the performance of the BoD in discharging its responsibilities.

Governors should always act in the best interests of the FT and are not expected to undertake the duties assigned to Directors or to be responsible for the operations and, ultimately, performance of the FT.

It is important that both the CoG and BoD see their interaction as primarily being one of constructive partnership. The BoD and CoG should seek to work effectively together and avoid unconstructive adversarial interaction.

The CoG as a whole, has the responsibilities and powers in statute and not individual Governors.

Governors do not have the right to inspect FT's property or services nor a duty to meet patients and conduct quality reviews

Though governors hold NEDs to account this does not mean that Governors are responsible for decisions taken by the BoD on behalf of the Trust.

### **Facilitating Governors' Roles**

Governors should familiarise themselves with the Trust's licence conditions and constitution which set out the terms under which the FT must operate

Directors should ensure Governors receive the information they need to undertake their role effectively and together they should agree the format for, and level of, detail of such information.

To ensure Governors are equipped with the skills and knowledge needed to discharge their duties appropriately, Directors must put in place appropriate training opportunities for new and existing Governors. These must be regularly reviewed and refreshed.

To help Governors to represent the interests of members and the public, the BoD should help to arrange opportunities for Governors to meet these two groups

## **A APPOINT AND, IF APPROPRIATE, REMOVE THE CHAIR AND NON-EXECUTIVE DIRECTORS (NEDS)**

### **Appointment**

The process for the appointment of the Chair and NEDs is led by the Nomination and Remuneration Committee (N&RC) on behalf of the Council of Governors (CoG) with the guidance of the Trust Chairman (or Senior Independent Director [SID] as appropriate). The N&RC should refer to the NED Recruitment Policy for guidance (Appendix 1)

The committee is involved in:

- Agreeing any specific skill requirements;
- Agreeing the role, job and person descriptions;
- Determining the approach(es) to identifying potential candidates (including the use of external recruitment agencies);
- Short listing candidates for interview;
- Participating in the interview panel;
- A majority of the panel will be from the CoG
- Recommending the preferred candidate to the CoG;
- Approval of recommendation requires positive support from a numerical majority of governors either present at the meeting or responding to an electronically distributed recommendation from Chair of Governors' N&RC; and.
- Ensuring that appropriate succession planning is in place

Meetings to undertake the above are chaired by the Trust Chairman in the case of NEDs and by the SID when the Chairman's position is involved (or longest serving alternative NED if SID not appropriate). The Chair will seek input from the Council of Governors to his/her annual appraisal of the NEDs and will share the outcome of the exercise, including the written self-evaluation of the contributions made. These requirements of the Chair will be included in his/her personal objectives;

### **Removal**

- Guidance (from Monitor) states that removal is likely to be appropriate only in very limited and particular circumstances as a last resort. That governors must ensure that a fair, rigorous, lawful and transparent process is in place. That they must also clearly understand the potential reasons which may lead to a removal decision before embarking on the process and that these reasons include but are not limited to:

- Gross misconduct or a request from the BoD for the removal of a particular NED;
- The chair losing the confidence of BoD or CoG; and
- Severe failure by the chair to fulfil their role.
- Following discussions involving appropriate parties (eg Chief Executive [where the chair is concerned], CoG, Chair, SID, and other NEDs) who must have the opportunity to put forward their views on the available evidence, a thorough investigation of the facts and concerns must be undertaken. This investigation of the allegations should be initiated by the CoG and undertaken by the N&RC, with appropriate CoG representation. The Trust may also determine that under certain circumstances an independent investigation is warranted.
- The investigation should consider the views of key personnel within the FT, and Governors should note that they can require one or more directors to attend a meeting to discuss and obtain information about Trust and director performance. They may also find information from the annual performance appraisal process helpful. However a decision on whether to hold a confidence vote in the Chair/NED concerned is one for the CoG. When a vote of no confidence in the chair is being considered by the CoG the Lead Governor should directly inform Monitor through the relationship manager
- A senior representative of the N&RC should present the findings of the investigation and consultation to a meeting of the CoG and the CoG must ensure all individuals are given adequate opportunity to respond to the allegations. This may require the attendance of the individual Chair/NED at the meeting. A vote among Governors is then set up and there must be a majority vote of all governors to carry a vote of no-confidence.. This in itself will not result in removal but will start the formal process for removal..
- Chair or SID (as appropriate) to then inform individual concerned of the decision.
- When an investigation has been set in train by the CoG it is expected that the Chair/NED would be restricted to attending the FT for formal BoD and committee meetings only. The individual would be effectively suspended from other activities within the role, pending investigation and consultation into them. In terms of the Chair, the CoG should consider whether they could be suspended while investigation and consultation processes are carried out. However the CoG may consider this appropriate where: there is a potential risk to patients or staff; the CoG deem that an individual may disrupt an investigation; or there is an allegation of fraud.
- Governors may seek legal advice on whether there is a power to suspend, whether it would be appropriate and the terms of any suspension before they make their decision.
- If the CoG is satisfied that a full and proper process has been followed it should call another CoG meeting to vote on the matter. If there is any doubt about the process it should seek clarification and remedy any deficiencies before voting. Removal requires the approval of three-quarters of the members of the whole CoG and not just those who attend the meeting.
- Non of the above processes take precedence over Monitor's statutory powers to suspend or remove a Chair/NED.
- The CoG will then need to make a new appointment to replace the individual and a description of the reasons for, and process of, removal will need to be set out in the next available annual report

### **Term Expiry**

- Governors' default position is not to automatically offer a new term but to go out to competition;

- The default position can be overturned if there is a compelling case to offer term renewal;
- N&RC to consider evidence and make recommendation to full CoG; This recommendation should also include a brief assessment of the costs of a recruitment campaign;
- CoG to decide based on majority vote; and
- Chair to inform NED of decision (replace Chair with SID if it is the Chair's position under consideration).

## **B DECIDE THE REMUNERATION, ALLOWANCES AND TERMS AND CONDITIONS OF THE CHAIR AND NEDS**

- N&RC to consider the following:
  - Chair/NED appraisal outcomes;
  - Chair/NED performance (for NEDs evidence provided by Chair; for Chair evidence derived from SID-led appraisal);
  - Healthcare environment (support to come from Trust HR dept); and
  - Benchmark data (support to come from Trust HR dept).
- N&RC determines recommendation to take to full CoG; and
- CoG decision based on majority vote.
- N&RC should refer to the NED Recruitment Policy for guidance (Appendix 1)

## **C APPROVE THE APPOINTMENT OF THE CHIEF EXECUTIVE OFFICER**

- Chief Executive recruitment led by Trust Chair who must consult the CoG on the process and give them an opportunity to endorse it. Chair will also keep Governors informed of progress;
- Chair will seek input from the CoG on the use of adverts, criteria and process for selection and the shortlisted candidates via the application documentation and where appropriate meetings with candidates; and
- Chair preferred candidate and 'supporting reasons' presented to:
  - N&RC, which forms opinion and recommends to full CoG;
  - CoG decision based on majority vote.

Should the preferred candidate not be approved by the CoG it must justify its reasons to the Chair and NEDs and ensure that the reasons are legitimate, factual and legally sound. The Chair may put forward the same candidate again with further assurances in relation to the concerns expressed by the CoG. Alternatively the Chair can seek a new candidate for approval. In either case, the process, the decision and the reasons for that decision should be set out in the FT's annual report

## **D APPOINT AND, IF APPROPRIATE, REMOVE THE TRUST'S AUDITOR**

### **Appointment**

- Audit Working Group (AWG) established by CoG, this group should not be confused with the Integrated Audit and Governance Committee (IAGC) which is a committee of the BoD;  
Terms of reference established;
- AWG meetings as necessary to appoint Trust's external Auditor;
- Support provided to AWG by Trust's Finance and other relevant staff includes:
  - Key knowledge requirements to make informed contribution to decision making from "The Audit Code for NHS FTs"; and
  - Factual information and analyses of Auditor candidates.

- AWG determines preferred Auditor and makes recommendation to full CoG; and
- Full CoG accepts / rejects recommendation by a majority vote.

### Removal

- AWG seeks approval of CoG to consider removal of the auditors;
- IAGC investigation taking internal professional advice, including the DoF as well as other finance staff, and external legal advice;
- Report to CoG, with opportunities for the auditors to respond to concerns or allegations;
- Vote by the CoG;
- Removal reported by Chair to Monitor; and
- Process and reasons set out in Annual Report.

### **E. HOLD THE NEDS INDIVIDUALLY AND COLLECTIVELY TO ACCOUNT FOR THE PERFORMANCE OF THE BOARD OF DIRECTORS**

This role has proved challenging to interpret and thus to establish specific mechanisms which Governors may follow to discharge the role, though it is often not recognised that the CoG can hold NEDs to account through a number of their other statutory duties. It is nevertheless clear that an underlying requirement is for Governors to: have a clear understanding of the role of the NED and his/her contribution to the work of the Board and ultimately the performance of the Trust; work more closely with the NEDs and; observe and be able to contribute to the appraisal of the NEDs. The CoG has a direct working relationship with the full BoD, which includes reviewing performance. Formally however they hold the NEDs to account for the performance of the whole BoD.

Scrutinise how well the BoD is working

- Governors may observe NEDs' contributions at meetings of the Trust Board and other relevant events. However Governors are not formally expected or required by Monitor to attend BoD meetings;
- The Chair will seek input from the Council of Governors to his/her annual appraisal of the NEDs and will share the outcome of the exercise, including the written self-evaluation of the contributions made.
- These requirements of the Chair will be included in his/her personal objectives;

Challenge the BoD in respect of its effectiveness

- There is a specific joint Governors/NEDs meeting once a year (this is in addition to the joint Board of Directors/Council of Governors that takes place in September). This should be an agended meeting around February of each year, chaired jointly by a Governor and NED so that the BoD can take account of Governors views, especially in regards to quality priorities, as the organisational forward plan is developed
- Link a Non Executive Director to each of the frequently meeting CoG Committees (ie Communications, Patient Experience and Strategy) so that, via the Committee Chairs, the relevant NED may be appraised of issues to be brought to the Board of Directors' attention. The NED will also on, occasions, attend meetings and/or provide timely written input;
- Use the powers and processes outlined in F and G
- Where performance concerns are identified, they can be raised at CoG meetings during the performance item on the agenda or with the Chair (or at Board of Director meetings) in those months when full CoG meetings do not take place,

though Governors may decide to discharge this function primarily through their Committee structure

Ask the BoD to demonstrate that it has sufficient quality assurance in respect of the overall performance of the FT

- In addition to the Chair at least one NED will be present for all Council of Governors' meetings and the expectation is that Governors will have the opportunity to question NEDs. All NEDs will also be encouraged by the Chair to attend at least one-third of Council of Governors' meetings;
- Metrics relevant to the licence and Risk Assessment Framework (principally governance and finance) in addition to other key measures of performance to be monitored by Council of Governors via review of data sets distributed to CoG members each month;
- Governors will develop their monitoring role and therefore any areas of responsibilities by requesting in depth reviews of areas of concern that emerge from the published data, and by reviewing outcomes from Executive Patient Safety Visits, PLACE assessments, membership and public engagement events, and other ad hoc inspections or surveys (undertaken by the FT or other organisations). They will discuss and agree with the BoD any actions to be taken, and these may involve Governors in further initiatives with staff and patients
- CoG to be provided with assurance that plans are in place to address performance concerns; subsequent monthly performance monitoring to ensure performance reverts to desired levels.

To facilitate the above the following will be provided

- Brief biographies for the NEDs to be available (and included in the Role of the Governor in EKHUFT document) which indicate areas of specific expertise, committee memberships, any additional working groups if applicable and any specific assigned responsibilities.
- Chair to meet CoG committee leads twice a year
- Trust Secretary to ensure that Governors understand the principles and components of the Trust's licensing arrangements;
- Before each BoD the CoG will receive a copy of the agenda with performance data, and afterwards a copy of the minutes
- Should it be deemed necessary CoG has access to Monitor's "Panel for Advising Governors". See N below
- Training and access to conferences to support governors in their delivery of this duty

**F. MAY REQUIRE ONE OR MORE DIRECTORS TO ATTEND A GOVERNORS' MEETING TO OBTAIN INFORMATION ABOUT THE TRUST'S PERFORMANCE OF ITS FUNCTIONS OR DIRECTORS' PERFORMANCE OF THEIR DUTIES (AND FOR DECIDING WHETHER TO PROPOSE A VOTE ON THE TRUST'S OR DIRECTORS' PERFORMANCE)**

- Directors to attend CoG meetings appropriately frequently and not just for the purpose of delivery of specific presentations;
- NED(s) attending CoG meetings to be available to respond to questions on recent Board and Board Committee activity;
- CoG and occasionally Committees to invite specific Directors or other Trust staff for Q&A/challenge on defined areas of Trust or (for Non Executive Directors) personal performance; and

- Invitations to attend are driven primarily by CoG performance concerns or interests, survey results, visit (including EPSVs) outcomes, or membership/public feedback.
- G. RECEIVE THE ANNUAL ACCOUNTS, AUDITOR REPORT AND ANNUAL REPORT INCLUDES ANNUAL ACCOUNTS, ANY REPORT BY THE AUDITOR ON THE ANNUAL ACCOUNTS, AND THE ANNUAL REPORT**
- In receiving these documents the CoG responsibility is to review the content and provide feedback and commentary to the BoD Ensure a fixed time-lined programme for considering these key documents, including the Quality Report, within a regular performance review and planning cycle is in place;
  - Feedback on achievement of previous FY goals are provided to CoG as part of the annual planning process;
  - A specific “strategy session” to discuss and gather CoG views on the Annual Plan for the following FY is in place (see E bullet 4); and
  - The final versions of the above documents for the previous FY should be presented at the AGM of the Council of Governors’ meeting. Governors can then comment and provide feedback to the BoD around performance and the documents presented, but do not have the scope to make changes at this stage..

## **Auditor Report**

- Audit Working Group established by CoG, with supporting terms of reference;
- Support provided to Group by Trust Finance staff;
- Group considers (external) auditor report in depth;
- Group makes recommendations to CoG on how the FT is performing; and
- Additional specialised training is provided for members of Group.

## **H IN PREPARING THE FORWARD PLAN THE BOD MUST HAVE REGARD TO THE VIEWS OF THE COG**

- In receiving these documents the CoG responsibility is to review the content and provide feedback and commentary to the BoD.
- The Annual Plan forwarded to Monitor must be discussed with the CoG, but it can be implemented without their approval. Any significant changes to the delivery of the FTs business plan will be included in the Annual Plan (e.g. Significant Transactions, Mergers, Acquisitions, Separations, Dissolution, Non NHS income and Private Patient Income)
- Canvass opinions of members of the public (or the body they represent for non-public governors) and feed back to the BoD to ensure that the opinions expressed during CoG and organisational led engagement get a sound hearing, and areas of appropriate challenge are identified. They may do this by, for example, constituency meetings, open days, questionnaires or talking to individuals through out the year. This process should however be agreed locally by the Trust and CoG.
- Once the forward plan has been submitted the CoG should inform stakeholders of the forward plan and the reasoning behind it.
- The CoG should be kept informed of progress with all forward plan initiatives so that they can continue to ensure that the interest of members and the public are represented.
- To facilitate the above the Trust will prepare and agree a timeline for governor engagement in the annual planning process. There will be broad context setting in Nov and more detail around the content of the plan in Jan, before further

discussion at the joint CoG/NEDs meeting in Feb prior to FIC approval which would consider CoG views.

Monitor guidance goes on to state that this role does not mean involving governors in operational planning of each initiative developed by the FT, rather that the views of governors, members and the public are discussed by the BoD when undertaking such planning. Nor is the BoD obliged to incorporate all governor comment into the forward plan, though they will respond to the CoG with an explanation as to why they have rejected any suggestions. However the BoD must pay attention to CoG views and consider them, but the weight given to them is up to the BoD

**I. APPROVE ‘SIGNIFICANT TRANSACTIONS’ (BY AT LEAST HALF OF ALL GOVERNORS VOTING). THE TRUST MAY CHOOSE TO INCLUDE A DESCRIPTION OF ‘SIGNIFICANT TRANSACTIONS’ IN THE CONSTITUTION.**

Monitor does not define “significant transactions” but in examples provided in Appendix F of the “Compliance Framework 2012/13” published 30 Mar 2012 it is clear that it is a financial concept. EKHU NHS FT will therefore adopt these definitions, and include them in its Constitution, though normal operational NHS contracts with CCGs and other commissioners will be excluded (from these definitions of significant transactions). The FT does not believe that the definition of “significant transactions” should be extended to include non-monetary elements. Though CoG views will be taken into account through the processes outlined in H above.

- “Significant” investments or divestments:
  - Assets subject to the transaction divided by gross assets of the FT larger than 25%;
  - Income from the transaction divided by total income of the FT larger than 25%; and
  - Capital of business being acquired/divested divided by total capital of FT larger than 25%.
- Directors will be responsible for ensuring Governors are appraised and involved at the earliest possible stage in the transaction;
- Where it is deemed appropriate Governors and NEDs may be involved in relevant workstreams, though commercial sensitivities and confidences may need to be maintained;
- More than half of the governors attending the meeting, must approve any “significant transaction”;

**J. APPROVE (BY AT LEAST HALF OF ALL GOVERNORS) AN APPLICATION BY THE TRUST TO ENTER INTO A MERGER, ACQUISITION, SEPARATION OR DISSOLUTION.**

- In this case merger, acquisition, separation or dissolution refers to another FT or NHS Trust;
- More than half of the total number of governors, not just those attending the meeting, must approve any merger, acquisition separation or dissolution;
- It is also expected that Governors will take part in the voting process and consider how the proposed transaction is expected to affect the performance of the FT. Governors should also seek the views of their members and the public in forming their decision and the BoD must provide sufficient information to allow the CoG to come to a decision;

- Once the final decision has been taken on the proposed transaction, and the chair has confirmed it is not confidential, the CoG should seek to communicate the result to their members and the public.
- K. DECIDE WHETHER THE TRUST’S PRIVATE PATIENT WORK, OR ANY ACTIVITY OTHER THAN PROVIDING GOODS AND SERVICES FOR THE HEALTH SERVICE IN ENGLAND, WOULD SIGNIFICANTLY INTERFERE WITH THE TRUST’S PRINCIPAL PURPOSE (I.E. THE PROVISION OF GOODS AND SERVICES FOR THE HEALTH SERVICE IN ENGLAND OR THE PERFORMANCE OF ITS OTHER FUNCTIONS).**
- The process for delivering this role will be closely linked to the timeline determined in the processes for H above. There is no definition of “activities other than the provision of goods and services for the purposes of the health service in England” and therefore directors and governors would need to reach agreement on a definition.
  - The Governors will be expected to determine if as a result of this activity (i.e. activity other than providing goods and services for the Health Service in England) there will be an inappropriate diversion of existing resources and/or staff away from the principle purpose of the FT. To do this Governors should consider whether they feel assured that the BoD as part of its decision making process has:
    - Carried out an effective process to reach it proposal;
    - Appropriately considered the interests of the members of the FT
    - Appropriately considered the interests of the public
    - So that the CoG can assure themselves that this activity meets the needs of members and the public with no detrimental effects on services as a whole
  - In providing information to the CoG the BoD should ensure that the CoG can answer the above three questions. Acceptable proposals are those Governors deem likely to meet the needs of members and the public (with no detrimental effect on services overall), and support successful Trust performance (eg by increasing FT income with beneficial effect on NHS funded services);
  - This decision will normally be taken when discussing and preparing the Annual Plan which must therefore include a description of proposed non-NHS income (see Appendix II for a definition). In order to support the CoG in making these decisions they may need to be provided with additional information (e.g. detailed financial projections) beyond that in the Annual Plan, in a timely fashion. This would include the relevant managers opinion on whether this work would affect the FT’s principle purpose;
  - This decision will be taken by the majority of Governors present at a quorum meeting. Only if the CoG approves the proposal can it go ahead; and
  - Any in-year proposals to initiate or increase activity outside the provision of goods and services for the Health Service of England would require the same approval.
  - When a decision has been taken and the chair has confirmed it is not confidential the CoG should communicate the result to members and the public

**L. APPROVE (BY AT LEAST HALF OF THE GOVERNORS VOTING) ANY PROPOSED INCREASES IN INCOME ATTRIBUTABLE TO ACTIVITIES OTHER THAN THE PROVISION OF GOODS AND SERVICES FOR THE PURPOSES OF THE HEALTH SERVICE IN ENGLAND BY 5% (OF TOTAL INCOME) OR MORE IN ANY FINANCIAL YEAR**

- Applies if Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the Health Service in England;
- Trust to provide written proposal to CoG, with all appropriate supporting information (including detailed financial projections);
- CoG to consider and decide if proposal:
  - supports successful Trust performance (eg by increasing income with beneficial effect on NHS-funded services)
  - meets needs of members and public (with no detrimental effect on services overall).
- CoG to vote on proposed increase with majority (of those voting) determining decision. Only if CoG approves proposal can BoD proceed; and
- CoG to communicate decision to members and public via Trust website once Trust Chairman has confirmed it is no longer confidential.

**M. APPROVE (BY AT LEAST HALF OF THE GOVERNORS VOTING) ANY AMENDMENTS TO THE TRUST'S CONSTITUTION. AMENDMENTS WILL NO LONGER NEED TO BE SUBMITTED TO MONITOR FOR APPROVAL**

- Detail of Constitution and governance issues to be overseen by Constitution Committee comprising 3 Governors, Trust Chairman, two NEDs and the Trust Secretary. Committee to consider all relevant business and make recommendations to Council of Governors
- Approval of Trust Constitution to be an agenda item on a Council of Governors' meeting;
- Draft Constitution produced with suggested amendments highlighted, in addition a separate paper is also produced with the rationale on the proposed changes and a legal opinion on the legality of the proposed changes;
- Half of a group of quorum governors must agree each individual change. With separate approval also required by the BoD. Both groups can initiate proposals for amendments to the Constitution; and
- Any change to the power, role or duties of the Council of Governors must also be presented by at least one member of the Council of Governors to the next Annual Members Meeting. If more than half of the members voting approve the amendment, then the amendment continues to have effect, otherwise it ceases to have effect

**N. APPROVE (BY AT LEAST HALF OF THE GOVERNORS VOTING) ANY REFERRAL TO MONITOR "PANEL FOR ADVISING GOVERNORS" OF QUESTIONS ABOUT TRUST FAILURE TO ACT IN ACCORDANCE WITH THE CONSTITUTION OR LEGISLATION**

Monitor will appoint a panel to which governors may refer a question concerning whether their FT has failed or is failing to act in accordance with its Constitution or legislation.

- Initial concerns from governors should be discussed with the Chair and/or other NEDs;
- If after repeated discussion with the Chair and/or other NEDs uncertainty still remains then a motion should be voted on by the Council of Governors. If more than half of the governors voting support the motion then the question can be put before the panel; and
- The panel will then decide whether to carry out an investigation into the question referred to it, and if so the panel will publish a report on their conclusion. However the FT will not be required to adhere to the panel's decision.

**O. REPRESENT THE INTERESTS OF THE PUBLIC AND MEMBERS**

- The CoG, collectively, is the body that binds the FT to its patients, service users and stakeholders
- Governors have a duty to represent the interests of the members of the FT and the public. Governors should therefore:
  - Seek the views of members and the public on material issues or changes being discussed by the FT
  - Feedback to members and the public information about the FT, its vision, performance and material strategic proposals made by the BoD
  - Communicate to directors of the FT the interests of members and the public rather than just their own personal views. Governors should then satisfy themselves that the BoD has appropriately considered the interests of members and the public in their material strategic decision making
- Governors should ensure that members and the public know when or where they are able to communicate with Governors and undertake activities required of them by the membership strategy as overseen by the communications and membership committee.
- Governors should always act in the best interests of the FT and are not expected to undertake the duties assigned to Directors or to be responsible for the operations and, ultimately, performance of the FT

**P. LEAD GOVERNOR**

- The Lead Governor will liaise between Monitor and the CoG where Monitor has concerns about the leadership of the Trust or in circumstances where it would be inappropriate for the Chair to contact Monitor or vice versa
- Monitor does not intend the Lead Governor to “lead” the CoG or assume greater power or responsibility than other Governors
- Monitor's only requirement is that the Lead Governor act as a point of contact between Monitor and the CoG when needed
- The presence of a Lead Governor does not, in itself, prevent any other Governor making contact with Monitor directly if they feel this is necessary.

**Q BEFORE EACH BOARD MEETING THE BOD MUST SEND A COPY OF THE AGENDA TO THE COUNCIL OF GOVERNORS AND AFTER THE MEETING A COPY OF THE MINUTES**

- Agendas and minutes for all parts of each BoD meeting will be shared with the CoG, though minutes of meetings from which the public have been excluded may be redacted if necessary
- The BoD will seek to minimize the amount of its business that is conducted in these “closed” meetings, commercial sensitivity and patient or staff confidentiality being the only normal justifications

- The CoG will observe the confidentiality attached to minutes flowing from these “closed” meetings
  - Governors attending public BoD meetings do so as members of the public and have no additional rights or privileges
- R THE TRUST MUST HOLD ANNUAL MEMBERS’ MEETINGS, AT WHICH AT LEAST ONE OF THE DIRECTORS MUST PRESENT THE TRUST’S ANNUAL REPORT AND ACCOUNTS, AND ANY REPORT OF THE AUDITOR ON THE ACCOUNTS. WHERE THERE HAS BEEN AN AMENDMENT TO THE CONSTITUTION WHICH RELATES TO THE POWERS, DUTIES OR ROLES OF THE COUNCIL OF GOVERNORS, AT LEAST ONE GOVERNOR MUST ATTEND AND PRESENT THE AMENDMENT, ON WHICH MEMBERS HAVE A RIGHT TO VOTE AND A RIGHT OF VETO.**
- Annual members’ meetings must also be open to the public
  - The purpose and conduct of the meetings will be prescribed in comprehensive standing orders which will form part of the Trust’s Constitution
- S THE TRUST MUST TAKE STEPS TO ENSURE GOVERNORS HAVE THE SKILLS AND KNOWLEDGE THEY REQUIRE TO UNDERTAKE THEIR ROLE**
- Governors will be offered induction training within two months of election (including on roles of Governors, and Directors/NEDs) and ongoing training thereafter, particularly in specialist areas
  - A training needs analysis and skills audit will be undertaken shortly after each election with active input from individual Governors. The Governor training programme, and detailed training plans, will be revised as necessary, and then reviewed and refreshed regularly
  - A summary report on training and skills will be presented to the CoG annually, linked to the effectiveness survey
  - Trust Chairman and Secretary should be involved in training, as, when appropriate, should other Directors/NEDs and, possibly, outside experts. Training will also be organised through external bodies, such as the FTGA and FTN
  - Training sessions should be scheduled at times that are convenient for the majority of those attending, and should be linked to other meetings wherever possible and appropriate
  - Governors should make every effort to attend training events organised for them
  - Governors are requested to feedback to the CoG when they have attended external events
  - Governors are requested to complete their mandatory training within 3 months of joining the CoG.

**Voting Matrix**

Serial	Subject Area	75% all CoG	Maj all CoG	Maj Quorate CoG
1.	Appoint Chair or NED			X
2.	Vote of no-confidence in Chair or NED		X	
3.	Remove Chair or NED	X		
4.	Extend term of Chair or NED			X
5.	Ts and Cs for Chair or NED			X
6.	Ratify appointment of CE			X
7.	Appoint/Remove Auditor			X
8.	Approve "Significant Transactions"			X
9.	Approve mergers, acquisitions, separations and dissolutions		X	
10.	Approve proposals for activity not related to the provision of goods and services to the Health service in England or Increase PPwork by >5%			X
11.	Elect lead governor			X
12.	Amendment to Constitution			X
13.	Referral to Panel			X

In any vote undertaken by e-mail it is expected that all the CoG would vote and this must be explained in the relevant e-mail. The accountability for both the BoD and CoG lies with the Chairman of the Trust.

**Appendices:**

**1. NED Recruitment Process**